

Serial No. 09/833,947

Applicant: STALEY

Amendment in Response to Office Action of 6/23/2004

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REMARKS

This is in response to the Office Action mailed June 23, 2004, alleging that the "response to the Office Action mailed on 29 December 2003, is unresponsive, because the response is not complete. Applicant fails to provide any argument to the rejections."

Note is taken that the Office Action dated December 29, 2003, allowed claims 1 and 9 and rejected Claims 2 - 8. Objections were made with regard to the drawings. It appears that the initial response submitted May 7, 2004, resolved such issues.

The Examiner then rejected Claims 2 - 8 "under 35 U.S.C. 103(a) as being unpatentable over Pasawicz (US Patent No. 6,329,943) in view of Sottile (US Patent No. 5,203,622)." In support of these rejections, the Examiner alleges "it would have been obvious that there exist a power source connected to the infrared device in order to operate" and "it would have been a matter of design choice to provide the on/off button (i.e. light control means) on the top portion of the housing" and lastly "it would have been a matter of design choice to provide a common or separate power source for the flashlight bulb and infrared light emitting diode." This rejection and the Examiner's opinion as to what would have been obvious are traversed, particularly, in view

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of the fact that there is no suggestion anywhere in the prior art to make the changes in applicant's device as disclosed and claimed and which the Examiner merely dismisses as being obvious.

More specifically, the Examiner has allowed Claims 1 and 9. The Examiner has rejected Claims 2 and 3 along with Claims 4 - 8 based on a combination of the teachings of Pasawicz and Sottile. The subject matter of dependent Claim 3 has been introduced into independent Claim 2 and, as a result, new Claim 2 defines applicant's invention in terms which are more clear than that of the prior art and in terms which more particularly point out and distinctly claim applicant's invention in terms neither disclosed nor suggested in the prior art. Specifically recited is the convenient orientation of the light emitting diode and the light bulb being positioned in a fixed manner at opposite ends of the housing. In this manner, light is projected in opposite directions at all times when the light sources are on along a common axis. In addition, specifically claimed is that the power source is a common power source for being electrically coupled to the infrared light emitting diode and the light bulb. None of these features are disclosed in the prior art cited and applied by the Examiner and none of these features are suggested by the references taken alone or in combination.

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It would appear that the Examiner has merely gleaned miscellaneous features in the prior art and has attempted to combine them without a teaching for their combination. The only teaching is in applicant's disclosure which, by definition, is not prior art. But even if there were a teaching for the combination, the resulting structure would still fail to anticipate applicant's invention for the reasons set forth herein above.

It is deemed that all grounds of objection and rejection have been overcome. Reconsideration and a Notice of Allowance are requested.